

REGISTRATION No. 814  
THIS AGREEMENT made this 14 day of JULY, 1958, between

BANK POLSKA KASA OPIEKI, S.A., a corporation created under the laws of the Republic of Poland (hereinafter referred to as "Bank"), maintaining an office at Traugutta 7, Warsaw, Poland, and PEKAO TRADING CORPORATION, a corporation created under the laws of the State of Delaware, United States of America (hereinafter referred to as "Pekao"), maintaining an office at Room 443, 25 Broad Street, New York 4, New York.

### EXPLANATORY STATEMENT

Pekao is engaged in the business of selling in the United States, both directly to senders and at wholesale to dealers, commodities in standard parcels, groups or units for delivery from stocks in Poland to recipients in Poland. Bank is an institution created under Polish law and under that law authorized to enter into mercantile transactions among others. This agreement covers the relationship between Bank and Pekao with respect to the above mentioned commodities.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

1. Except as provided in paragraph 2(b) hereof this agreement shall be effective and binding upon the parties as of the opening of business on July 1, 1958.
2. Subject to the limitations that Bank will not sell to Pekao in order to fill orders received by Pekao from persons located outside the Western Hemisphere or from persons located in Argentina or the Dominion of Canada and that this agreement is non-exclusive, Bank agrees to sell to Pekao and Pekao agrees to purchase from Bank, standard parcels, groups or units (hereinafter collectively referred to as "parcel" or "parcels" of livestock, foodstuffs, machinery and articles of merchandise (hereinafter collectively referred to as "materials") as follows:

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(a) Pekao and Bank shall from time to time agree upon the quantity, type and quality of materials to be sold as a parcel. The parties agree that Pekao Forms 214-1-1956, M2-9-1957, M3-9-1957 and M4-3-1958, copies of which are attached hereto and made a part hereof to the same extent as if set forth in fullherein, and hereinafter collectively referred to as Exhibit A, list and describe all of the agreed parcels as of the date hereof. Bank also agrees without additional charge to furnish to Pekao upon request reasonable quantities of descriptive literature, photographs, advertising copy and like information, and samples where feasible of the materials constituting agreed parcels. Bank agrees without additional charge to advertise Pekao parcels and Pekao's business in Poland.

(b)(1) At the time each parcel is agreed upon as in subparagraph (a) above provided, the Bank and Pekao shall agree upon the price to be paid therefor by Pekao (hereinafter referred to as "distributor's price"), which price shall include cost of delivery and insurance. Such distributor's price shall not be higher than the price charged on the Polish market for the purchase at wholesale of the materials involved, for delivery and to be insured as herein provided, except that prices slightly in excess of the Polish market may be charged when required for accounting convenience as herein provided. As a matter of convenience in accounting between Pekao and its dealers and between Bank and Pekao, Pekao utilizes its own retail prices in keeping its records and computes the amount due from dealers or to Bank in terms of a percentage of the retail price. Bank agrees that the distributor's price for any parcel agreed upon as herein provided shall be adjusted upward or downward, at the option of Pekao, by such amount not exceeding (10%) as is necessary to bring the Pekao retail price to a round figure.

(2) In addition to orders for such standard parcels, Bank agrees to accept orders for stated sums of money under which the selection of the

type parcel is left to the recipient (hereinafter referred to as "for selection" orders). Such orders shall obligate the Bank to deliver from available stocks such items as the recipient may designate at the price in effect at the time the designation is made. When the recipient is notified of the sum, in dollars, available for his selection of merchandise, Bank shall obtain from him acknowledgement that he has received such notice and accepts Bank's responsibility for the delivery of the merchandise and shall furnish a copy of such receipt to Pekao. Upon delivery by Bank to Pekao of such receipt Bank shall be responsible solely to recipient or in the event of his death, his legal successors, and shall be deemed to have performed its obligation under this contract to Pekao, provided, however, that upon specific request Bank will furnish information concerning the articles actually selected by the recipient and provided further that it will make no cash payment whatsoever to any recipient whether of a "for selection" order or of a standard parcel.

(3) The distributor's price until January 1, 1959 with respect to orders for specific parcels or "for selection" orders totaling \$500. or less, shall be eighty-two (82%) percent. The distributor's price from and after August 1, 1958, with respect to orders, whether for specific parcels or "for selection", in excess of \$500. shall be ninety (90%) percent. From and after January 1, 1959 the distributors price for specific parcel orders of \$500. or less shall be eighty-two percent (82%) and "for selection" orders of \$500. or less shall be eighty-six percent (86%), the price of any orders in either category in excess of \$500. remaining as above ninety percent (90%).

(4) In connection with "for selection" orders Pekao makes a handling charge to its customers. Bank shall receive as compensation for the additional work involved in its handling of such "for selection" orders eighty-two percent (82%) of the one dollar (\$1.00) handling charges now

charged. Should the amount of the handling charge be changed, the parties shall agree upon the percentage thereof due each.

(c) Without Pekao's consent, no change shall be made in the quantity, type or quality of materials constituting a parcel, or in the price to be paid therefor by Pekao, until thirty (30) days after receipt by Pekao of notice in writing from Bank that such a change is desired, nor shall any such change relate to orders received by Bank prior to the expiration of said thirty-day period even though not delivered until after the expiration of such period. If the parties are unable within the thirty-day period to agree concerning the requested change, the parcel involved shall not be considered an agreed parcel after the end of said thirty-day period.

(d)(1) Except as the procedures set forth in this subparagraph (d)(1) are changed by correspondence or other writing confirmed by both parties, transmittal of orders shall be handled as follows; Orders shall be transmitted to Bank by Pekao on a manifest, setting forth for each the name and address of the sender, and of the recipient (where available the name of recipient's father) the type parcel and the agreed price for the parcel, or, in case the sender has left selection of the type parcel to the recipient a statement of that fact and of the total amount available to recipient, together with a summary, in duplicate, showing the order numbers of the orders detailed on the manifest. Orders may be also transmitted by cable, but if so shall be confirmed by inclusion on the next manifest forwarded, in which case an appropriate notation shall be made on the manifest to indicate that the parcel order involved has been previously transmitted by cable. Bank shall endorse each page of the summary with the following certificate which shall be signed by a responsible official of the Bank:

"The orders referred to herein are accepted for delivery, except that orders for material which cannot be delivered within \_\_\_\_\_ days have been stricken in red pencil and are not accepted."

and shall return one copy of the summary to Pekao.

(2) Bank shall promptly after receipt of an order, make or cause to be made delivery of the ordered parcel to the recipient named in the order either by mail, by direct delivery to the home of the recipient, by delivery to the nearest railroad station, or by notifying the recipient that the parcel has been made available to him at the order of the sender (naming him) and that it may be obtained by calling at the place stated in the notice. Except as points of delivery are set forth for particular parcels in Exhibit A hereto, the choice of method of delivery shall be at the option of the Bank. Bank shall obtain from recipient of a specific parcel order a receipt evidencing delivery and, as promptly as may be consistent with proper entry on its books of account, shall forward the receipt to Pekao. If any specific parcel order has not been delivered to the recipient within 90 days from the receipt of the order by Bank, Pekao may cancel such order by notice in writing addressed to the Bank, provided, however, that no such notice of cancellation shall be binding upon Bank until 90 days after actual receipt by the Bank of Pekao's cancellation notice.

(3) If the recipient of a "for selection" order dies before having signed the receipt provided for in subparagraph (b)(2) hereof, or if the recipient of an order for a specific parcel dies before having evidenced delivery of the specific parcel to him by signing a receipt therefor, Bank shall notify Pekao and withhold delivery under such order until further advice by Pekao. If (i) within thirty (30) days Bank is unable to locate the recipient named in a "for selection" order, or (ii) the recipient of a notice that a specific parcel is available for delivery to him fails or refuses to take delivery of his parcel for a period of thirty (30) days after said notice is forwarded to him by mail, or (iii) the recipient of a notice concerning a "for selection" order fails or refuses to sign a receipt in the form provided for in subparagraph (b)(2) hereof covering such order, then, and in any

such event, Bank shall notify Pekao and withhold delivery of any such order until receipt of further instructions from Pekao.

(4) Upon cancellation under Paragraph 2(d)(2) hereof, Bank shall refund the entire sum received by it unless the cancellation results from an event not caused by the Bank in which event Bank shall receive one dollar (\$1.00) for each order in excess of ten dollars (\$10) cancelled. If cancellation occurs under Paragraph 2(d)(3) hereof, Bank shall refund the entire sum received less one dollar (\$1.00) for each order in excess of ten dollars (\$10) cancelled.

(5) Pekao shall be entitled, whether or not the order has actually been delivered, to pay from the guarantee funds hereafter in subparagraph (g) hereof referred to any judgment that may be obtained against it by any of its customers with respect to an order for which Pekao had not received the recipient's receipt prior to such event.

(e) Bank shall cause each parcel delivered by other than its own agents or employees to be insured against loss in transit by water, fire, theft or other cause in the amount of the agreed price of the parcel. All claims by recipients for damaged or defective materials shall be adjusted by Bank without charge to Pekao. In the event Bank and recipient are unable to reach a satisfactory adjustment of any such claim, Bank shall, upon return of the parcel, deliver to recipient a receipt therefor in duplicate and shall transmit to Pekao one copy of such receipt with the statement endorsed thereon that the order in question has been cancelled.

(f) Payment of the agreed price for each parcel ordered shall be made by Pekao transferring to the Bank simultaneously with the forwarding of each order manifest the amount in United States dollars (net New York funds) equal to the distributor's price for all orders included in the manifest less the aggregate of credit memoranda for all orders cancelled or not accepted by Bank as hereinabove provided. Payments shall be made,

unless Bank otherwise specifically directs, Bank's account with the Irving Trust Company, One Wall Street, New York, and at the time of each such payment Pekao shall send Bank advice thereof showing the manifest or manifests covered by the payment and listing the amounts withheld or deducted therefrom.

(g) Bank has deposited with Pekao the sum of Fifty Thousand Dollars (\$50,000.00), which said deposit shall be held in trust by Pekao upon the following terms and conditions:

(1) Said sum of money has been or shall be deposited by Pekao in one or more interest accounts with one or more federal savings and loan associations or prime New York Banks, each of said accounts to be entitled "Pekao Trading Corporation, Special Account" and to be subject to the order of properly designated officials of Pekao. Until repaid to Bank, or applied as hereinafter provided, the said sum of money and interest thereon, if any, shall continue to be money of Bank and shall be held in trust by Pekao, and shall not be mingled with its funds or become or be considered as assets of Pekao.

(2) Pekao may apply the sum of money so deposited, and interest thereon (hereinafter sometimes referred to as the "fund" or "trust fund"), or any part thereof, for any of the following purposes: (1) in the event of any dispute between Pekao and its customer (the sender), Pekao may make such adjustment (including a full refund) as it in its sole discretion deems proper and may recoup from said fund, or apply said fund to the payment of, the entire dollar amount of such adjustment (not, however, in excess of the dollar amount paid to Bank for such parcel); provided, however, that if the dispute concerns non-delivery of a parcel for which Pekao has theretofore received from Bank the recipient's receipt, Pekao shall not make any such adjustment or refund without Bank's agreement thereto; (2) In the

event that any order is cancelled for any of the reasons set forth in subparagraph (d) above, and the amount of undelivered orders is greater than the amount currently due by Pekao to Bank, Pekao may recoup from said fund, or apply said fund to the payment of, the entire dollar amount of the undelivered or unaccepted orders, not, however, in excess of the dollar amount paid to Bank for such orders; (3) In the event of any breach by Bank of this agreement, said trust fund may be retained by Pekao pending a determination by the arbitration court hereinafter provided for of the dollar amount of Pekao's damages for such breach, and upon any such determination the trust fund may be applied by Pekao toward the payment of such damages; (4) To the extent necessary to pay any income taxes due the United States or any other taxing authority on account of interest earned on said fund, payment of such tax shall be made by Pekao and charged against the fund. For any of such purposes withdrawals from one or more of the Special Accounts hereinabove provided for shall be made and the sum so withdrawn shall be paid into or through Pekao's regular checking account. Pekao shall furnish to Bank notice of any adjustment or refund made by it and of the resultant withdrawal from the fund, and Bank shall within twenty (20) days after such notice deposit with Pekao such amount, if any, in dollars as may be required to bring the fund to a total of Fifty Thousand (\$50,000.00) Dollars.

(3) Upon termination of this agreement and due performance by Bank of the provisions hereof, Pekao shall pay over to Bank, its representatives or assigns, the sum of money deposited, with interest thereon, if any, less the amount properly paid or payable to Pekao to itself under the provision of this agreement.



(h) In addition to the guarantee fund provided for in subparagraph (g) hereof, the Bank shall provide a written guarantee of Bank Handlowy, Warsaw, Poland, in the amount of One Hundred Thousand (\$100,000.00) Dollars, which shall not be enforceable, however, until the guarantee fund provided for in subparagraph (g) hereof shall have been exhausted, the condition of which guarantee shall be that Bank Handlowy will repay to Pekao any amounts paid by Pekao to Bank for unaccepted or undelivered orders and that the entire obligation of Bank under this agreement, when reduced by arbitration or court proceeding to a dollar amount, will be paid by Bank Handlowy to Pekao.

3. The term of this agreement shall be for one (1) year from the date hereof, and thereafter shall continue from year to year, for periods of one (1) year, unless either party gives the other notice of termination sixty (60) days prior to the end of any such year.

4. Any claim, controversy or dispute arising out of this agreement shall be submitted to arbitration to be held in the City of New York, New York, United States of America, by an arbitration court consisting of three (3) persons, one to be appointed by each of the parties hereto and the third to be chosen by the two thus chosen. In the event of the failure or inability of the two thus chosen to agree upon a person to serve as super-arbitrator, the superarbitrator shall be appointed by the President of the Polish Chamber of Foreign Commerce, Warsaw, Poland.

5. No waiver or modification of any of the terms of this agreement shall be valid unless in writing signed by the parties hereto.

6. This agreement is executed in both the English language and the Polish language, but in the event of any discrepancy or conflict between the two versions, the Polish language version shall govern.

This agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America.

IN WITNESS WHEREOF, Bank Polska Kasa Opieki, S.A. has caused this agreement to be executed by <sup>HENRYK MUGENIK</sup> ~~Henryk Mugenik~~ <sup>GENERAL MANAGER</sup> ~~its manager~~ and Pekao Trading Corporation has caused this agreement to be executed by Walter Talmont, its President, and its seal to be affixed and attested by J. Daniec, its Secretary, all on the day and year first above writte.

BANK POLSKA KASA OPIEKI, S.A.

By [Signature]

PEKAO TRADING CORPORATION

By [Signature]  
Walter Talmont, President

ATTEST:

J. S. Daniec

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STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

REGISTERED ON No. 177

On this 14<sup>th</sup> day of *July*, 1958, before me, a Notary Public in and for said county, personally appeared WALTER TALMONT, President of the Pekao Trading Corporation, to me personally known and known to me to be such President, and the same person who executed the foregoing instrument, who, being by me duly sworn, according to law, did say that he is the President of Pekao Trading Corporation; and that the seal affixed to the said instrument is the corporate seal of aforesaid corporation; and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and by him delivered as and for its act and deed.

In testimony whereof, I have hereunto set by hand and affixed my official seal the day and year above written.

*Edward Lehner*  
Notary Public

(Add Polish Acknowledgement)

EDWARD LEHNER  
Notary Public, State of New York  
No. 317,7985  
Qualified in New York County  
Commission Expires March 20, 1960

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